

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 16-4-1996.

CRIMINAL APPEAL NO. 824 of 1985

with

CRIMINAL APPEAL NOS. 825 & 826 OF 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

HARSHADKUMAR & BROTHERS AND ANR.

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Appearance:

1. Criminal Appeal No. 824 of 1985

Shri M.A. Bukhari, APP for appellant.

SERVED for Respondent No. 1 & 2.

2. Criminal Appeal No. 825 of 1985

Shri M.A. Bukhari, APP for the appellant.

SERVED for Respondent No.1 & 2

3. Criminal Appeal No. 826 of 1985

Mr. M.A. Bukhari, APP for appellant.

Shri Sudhansu H. Patel for Shri H.L. Patel,

Advocate for the respondents Nos. 1 & 2.

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Coram: H.R. Shelat, J.  
(16-4-1996)

ORAL JUDGEMENT

The respondents were placed on trial before the Court of the Judicial Magistrate (First Class) at Pardi, for the offence punishable under Section 22(a) and others of the Minimum Wages Act. The trial ended in acquittal. Being aggrieved by the acquittal order dated 17th April 1985 the State has preferred these three appeals. The facts leading the State to prefer these three appeals may in brief be stated.

2. Ramanlal Laxmanbhai Parmar at the relevant time was serving as Labour Officer and Inspector for Minimum Wages at Vapi in the District of Valsad. The opponents were carrying on their business in the name and style "Harshadkumar and Brothers" at Vapi. Ramanlal Laxmanbhai Parmar on 7th August 1984 made a surprise visit to the shop of the opponents. He could mark that the opponents had employed a boy aged about 12 to 15 years for necessary assistance in the business. Ramanlal L. Parmar put several questions and called for necessary registers and records. The registers were not shown, and as the opponents replied evasively he suspected breach of different provisions of Minimum Wages Act. According to him, Muster Roll, Punch Card, Pay Roll, Wage Register etc. were not maintained. The salary slip was not issued to the employees. The inspection book was also not maintained and the yearly registers as per the rules framed were also not maintained. He could also mark that by adopting different devices and to screen themselves from the liability the opponents had not maintained the registers required to be maintained under the provisions of Minimum Wages Act. A notice was then served upon the opponents and they were called upon to comply with the provisions of the Act. The opponents then replied that as they had employed no one they were not at all under any obligation to maintain the registers and they were not covered by the Minimum Wages Act. The Labour Officer, after preparing necessary papers decided to lodge the complaint against the opponents as the opponents had according to him committed the offences punishable under Section 22, 26(1), 26(2) of the Minimum Wages Act. Three complaints were lodged before the then Judicial Magistrate (First Class) at Pardi. They were then registered as Criminal Cases Nos. 412/85, 413/85 and 414/85. The learned Magistrate then recorded the evidence after taking the plea of the opponents. Appreciating the evidence before him the learned Magistrate found that offence as alleged was not established beyond reasonable doubt against the opponents. He therefore acquitted the opponents in all the three cases on 17th April 1985. Being aggrieved by such orders of acquittal, the State has preferred

these three appeals. Criminal Appeal No. 824 of 1985 is filed against the order passed in Criminal Case No. 412 of 1985, Criminal Appeal No. 825 of 1985 is filed against the order of acquittal passed in Criminal Case No. 413 of 1985 while Criminal Appeal No. 826 of 1985 is filed against the order of acquittal passed in Criminal Case No. 414 of 1985. While passing the order of acquittal the learned Magistrate also in each case ordered the Labour Inspector to pay Rs.25/- by way of compensation to the opponents within a period of 7 days and that is vehemently assailed in these three appeals.

3. In these three appeals common questions of law and facts are raised. With a view to avoid consumption of time, duplication of work and hardship to the parties, as well as conflicting judgments, with the consent of the advocates representing the parties, I preferred to hear all the three appeals together and dispose the same of by a common judgment. Accordingly, all the appeals are heard and by this common judgment all the appeals shall stand disposed of.

4. Mr. Bukhari, the learned APP representing the appellant-State submitted that the learned Magistrate misread the evidence on record and fell into error in reaching the conclusions against the State. There was sufficient evidence on record establishing the guilt of the opponent but without any logical reasonings the learned Judge erroneously passed the order of acquittal which was certainly against the weight of evidence on record. The learned Magistrate according to him was also not right in ordering the complainant to pay compensation of Rs.25/- to the opponents. In this regard, necessary provisions of law were overlooked and set at naught by the learned Magistrate. He therefore urged me to allow all the three appeals, set aside the order of acquittal and also of compensation; and convict and sentence the opponents adequately.

5. On behalf of the opponents, Mr. S.H. Patel submitted that the learned Magistrate was absolutely right in passing the order of acquittal, no error was committed either of law or of fact by the learned Magistrate and there was no reason to interfere with the order of acquittal passed in all the three cases. He therefore urged me to dismiss the appeals.

6. On going through the entire evidence on record, I see no justification to interfere with the order of acquittal. I entirely agree with the learned Magistrate reaching to the conclusion that offence alleged against the present opponents is not proved beyond reasonable doubt. In support of his say, the Labour Inspector, Mr. Ramanlal Parmar has not examined any one knowing the fact about employment of a boy. Simply because at the time of his visit he found a boy in the premises, the same cannot logically lead any one to believe that he was the

employee for assistance in the business. At times a relative may also attend the shop or because of one's own urgency the customer may also assist in bringing the article or thing from one place to the till. Any of the neighbours if at all knowing about the fact is also not examined. Except the bare statement of the complainant, there is nothing on record indicating that the opponents had employed a boy for the business. It is not safe to accept the bare statement and hold that the person was employed. The Inspector visiting the business premises of the opponents has also not recorded the statements of others in the neighbourhood running the business or residing in the locality. It would not be therefore just and proper to jump to the conclusion that the opponents really employed a boy and thereafter did not comply with the relevant provision governing the employment.

7. When employment of a boy is not established and there is no other employee in the business premises of the opponent, the question about the registers required to be maintained relating to the employment of the person would not arise and in that case if the registers pertaining to the employment of the person are not kept the person running the business cannot be fastened with the liability. In view of the matter, the learned Magistrate was perfectly right in acquitting the opponents holding that the charge in that regard was not proved; and I see no reason to reverse the order of the learned Magistrate.

8. No doubt, under Section 250 of the Criminal Procedure Code, 1973, the Court is free to award compensation to the accused if there is a reason to believe that the allegations made against the accused were without any reasonable cause. Before passing the order about the compensation if the Magistrate forms the opinion that the accusations made were without any reasonable ground, he may call upon the complainant making the allegation forthwith to show cause why he should not pay compensation to the accused. If the complainant is not present at the time of passing order of acquittal, he can issue summons and direct him to appear and show cause why order about compensation should not be passed. The Magistrate has then to consider the explanation offered, and after considering, if he finds that there was no reasonable ground for making the accusations he can make an order of compensation of such amount not exceeding the amount of fine which he can impose in case the offence is proved. In short, the procedure is provided vide Section 50 of Criminal Procedure Code and it is on the principle of natural justice. If any one is to be condemned he is required to be heard. In this case the procedural aspect is set at naught by the learned Magistrate and the complainant is condemned unheard. When that is so, the order passed with regard to the compensation is illegal and not at all tenable at law.

9. For the foregoing reasons, the appeal is required to be partly allowed because the order of compensation passed being not tenable will have to be quashed. In the result, the appeal is partly allowed. The acquittal order passed by the learned Magistrate is maintained, but the order about compensation of Rs.25/- ordered to be paid to the opponents in each case is hereby quashed and set aside.

10. If the amounts of compensation are deposited in Court or paid to the opponents, the same be refunded to the complainant. A copy of this Judgment be placed in Record & Proceedings of Criminal Appeal Nos. 825 of 1985 and 826 of 1985.

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